

**MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

ENOCH ADAMS JR., et al. v. *TECK COMINCO ALASKA INC.*

THE HONORABLE JOHN W. SEDWICK CASE NO. 3:04-cv-00049-JWS

PROCEEDINGS: **ORDER FROM CHAMBERS** Date: March 18, 2008

At docket 224 plaintiffs have moved to exclude the testimony of intervenor-defendant Northwest Arctic Borough ("NAB") witness Sikauraz Martha Whiting. Ms. Whiting is the current mayor of the borough. The basis for the motion is failure to disclose the witness as required by applicable provisions of the Federal Rules of Civil Procedure and this court's pre-trial order. The motion has been fully briefed. Oral argument was not requested, and it would not assist the court.

Although the parties have spent considerable ink on the issue, there is little that need be said. Here it is: First, it is undisputed that NAB did not disclose Ms. Whiting as a witness in this litigation at any time prior to inserting her name in the final witness list filed on January 22, 2008. Second, this court's final pre-trial order specifically stated that the final witness list could include "only persons who have been previously disclosed as potential witnesses in a timely filed prior witness list." (Doc. 177 at p. 2)

NAB seeks to avoid compliance with the court's clear order by pointing out that it had disclosed in an earlier lawsuit that its mayor would be a witness. This is not a tenable excuse. The failure to disclose in this lawsuit that the mayor would be a witness has deprived plaintiffs of the opportunities for discovery which the Rules of Federal Procedure are intended to assure. While Whiting would not testify until the case reaches the penalty phase many weeks from now, the parties and the court have their hands full with final pre-trial preparations and the trial in the liability phase. To consider re-opening discovery now would mock this court's efforts to provide for the orderly development and trial of this case.

The motion at docket 224 is **GRANTED**.
